



10-07-02

EV 077332980

3745

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 10/047,198
Filing Date October 26, 2001
Inventor Gilbert, et al.
Assignee Pyrotek, Inc.
Group Art Unit 3745
Examiner Flanagan/Faison-Ball
Attorney's Docket No. PY2-023
Title: Molten Metal Pump Particle Passage System

TRANSMITTAL LETTER

To: Assistant Commissioner for Patents
Washington, D.C. 20231

From: Wells St. John P.S.
601 W. First Avenue, Suite 1300
Spokane, WA 99201-3828
Telephone: (509) 624-4278
Fax: (509) 838-3424
Customer No.: 021567

Enclosed are:

1. PTO Return Postcard Receipt
2. Transmittal Letter
3. Declaration of Filing of Omitted Items
4. Petition for Determination that Figures 11 and 12, Sheet 6 of 8, was Received by the U.S. PTO (dated 10/1/02)
5. Check #136072 in the amount of \$130.00 for petition filing fee
6. Photocopy of PTO Return Postcard Receipt showing date stamp
7. Copies of the following papers previously filed with the PTO:
 - a. PTO Return Postcard Receipt and postcard receipt with PTO date stamp
 - b. Transmittal Letter dated 4/17/02
 - c. Petition for Determination that Figures 11 and 12, Sheet 6 of 8, was Received by the U.S. PTO (dated 4/17/02)
 - d. Sheet 6 of 8 including Figures 11 and 12
 - e. Declaration of Omitted Items (dated 4/17/02), including true copies of: postcard receipt, Express Mail receipt, Ex Post Declaration of Express Mailing
 - f. Response to Notice of Omitted Item(s) (dated 4/17/02)
 - g. Copy of Notice of Omitted Item(s) dated 3/29/02
 - h. Copy of Check #134656 dated 4/11/02 for \$130.00
8. Copy of Decision Dismissing Petition dated 8/5/02

Small Entity Status is claimed.

Large Entity Status Applies.

Deposit Account Authorization - The Commissioner is hereby authorized to charge payment of fees or credit overpayment to Deposit Account No. 23-0925 in connection with: any patent application processing fees under 37 CFR 1.17; and any filing fees under 37 CFR 1.16 for the presentation of extra claims.

Date: 10/1/02

By:


Mark W. Hendrickson
Reg. No. 32,356

OCT 16 2002
TECHNOLOGY CENTER 3000

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DATE	DESCRIPTION	INVOICE #	AMOUNT	DEDUCTION	NET AMOUNT
04/11/02	1001 Commissioner of Patents & Trademarks PY2-023 - Response to Notice of Omitted Items Filing Fee (MH)		130.00		130.00

EV077332980
EV026158791

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WELLS, ST. JOHN, ROBERTS, GREGORY & MATKIN, P.S.
Vendor: 1001 Commissioner of Patents & Trademarks 134656

Date	Description	Invoice #	Amount	Disc	Net Amt
04/11/02	PY2-023 - Response to Notice of Omitted Items Filing Fee (MH)		130.00		130.00

Check Date	Check #	Gross Amt	Disc Amt	Net Amt
04/11/02	134656	130.00	0.00	130.00

EV026158791



EV 077332980

128 West Divisadero - Room 201

2928 S. Spotted Road



EXPRESS
MAIL

POST OFFICE



115

The name of the U. S. Patent and Trademark Office acknowledges receipt of application referred to in the following:

Application Gilbert et al.

NEU **Mullen Metal Pump-Particle Passage System™**

Return, Standard Receipt

卷之三

Sydney Apple - How Transmittal & Fee Transmittal

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Investors Declaration & Power of Attorney (In my sole discretion)

Sheets of formal drawings (figs. 1-5)

Assignment of the Invention to Pyrotek, Inc. (See P-1, condition 1 over Sheet

FL 844051515US

卷之三

FOR PICKUP OR TRACKING CALL 1-800-541-1333



EV 077332980



PY2-023 (MWH) Date: 4/17/02
Appn. Serial No. 10/047,198 filed 10/26/01
Title: Molten Metal Pump Particle Passage System

The stamp of the U.S. Patent & Trademark Office acknowledges receipt of the following:

1. PTO Return Postcard Receipt **EV 026158791**
2. Transmittal Letter
3. Petition for Determination that Figs. 11&12, Sheet 6 of 8, was Rec'd by the U.S. PTO
4. Sheet 6 of 8 including Figures 11 and 12
5. Decl. of Omitted Items, incl. true copies of: postcard receipt, Express Mail receipt, Ex Post Decl. of Exp. Mailing
6. Response to Notice of Omitted Item(s)
7. Copy of Notice of Omitted Item(s)
8. Check # 1346050 for \$130.00

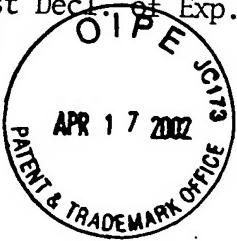
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PY2-023 (MWH) Date: 4/17/02
Appn. Serial No. 10/047,198 filed 10/26/01
Title: Molten Metal Pump Particle Passage System

The stamp of the U.S. Patent & Trademark Office acknowledges receipt of the following:

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3. Petition for Determination that Figs. 11&12, Sheet 6 of 8, was Rec'd by the U.S. PTO
4. Sheet 6 of 8 including Figures 11 and 12
5. Decl. of Omitted Items, incl. true copies of: postcard receipt, Express Mail receipt, Ex Post Decl. of Exp. Mailing
6. Response to Notice of Omitted Item(s)
7. Copy of Notice of Omitted Item(s)
8. Check # 1346050 for \$130.00





EV 77332980 EV 026158791

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 10/047,198
Filing Date October 26, 2001
Inventor Gilbert, et al.
Assignee Pyrotek, Inc.
Group Art Unit 3745
Examiner Not yet assigned
Attorney's Docket No. PY2-023
Title: Molten Metal Pump Particle Passage System

PETITION FOR DETERMINATION THAT FIGURES 11 AND 12,
SHEET 6 OF 8, WAS RECEIVED BY THE U.S. PTO

To: Assistant Commissioner for Patents
Washington, D.C. 20231

From: Mark W. Hendrickson (Tel. 509-624-4276; Fax 509-838-3424)
Wells, St. John, Roberts, Gregory & Matkin P.S.
601 W. First Avenue, Suite 1300
Spokane, WA 99201-3828

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Applicant filed the above-referenced U.S. patent application on October 26, 2001 and included in the filing were 8 sheets of figures, labeled figures 1 through 15. Although the figure number 7 was skipped, there were 14 figures on 8 drawing sheets which were filed. The drawings were mis-numbered so that there was no figure 7; however, sheet 6 of 8 was filed and contained figures 11 and 12. The PTO has indicated figures 11 and 12 were omitted items.

The applicant hereby petitions that the U.S. Patent & Trademark Office determine that the items were actually received by the U.S. PTO, based upon the Declaration of Mark Hendrickson and the documents provided in support thereof.

37 C.F.R. §1.10(a) provides:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

In this case, the documentation attached to the Declaration of Mark Hendrickson clearly establishes that the proper Express Mail procedure was followed; that the USPS properly initialed acceptance on October 26, 2001; the Ex Post Declaration clearly shows 8 sheets of formal drawings, Figs. 1-15; and the postcard received back clearly shows that 8 sheets of formal drawings were provided. The drawings are clearly labeled sheets 1 through 8, and sheet 6 included figures 11 and 12.

Based on the foregoing, the applicant has complied with the rules and hereby petitions that the U.S. Patent & Trademark Office determine that the omitted items, namely figures 11 and 12, were received by the U.S. PTO on October 26, 2001.

In accordance with the requirements, the applicant has submitted a petition fee of \$130.00, and due to the evidence that the deposit was made, the applicant hereby respectfully requests that the petition fee be refunded.

Respectfully submitted,

Dated: 4/17/02

By: Mark W. Hendrickson
Mark W. Hendrickson
Reg. No. 32,356



EV 077322980

EV 026158791

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 10/047,198
Filing Date October 26, 2001
Inventor Gilbert, et al.
Assignee Pyrotek, Inc.
Group Art Unit 3745
Examiner Not yet assigned
Attorney's Docket No. PY2-023
Title: Molten Metal Pump Particle Passage System

DECLARATION OF FILING OF OMITTED ITEMS

To: Assistant Commissioner for Patents
Washington, D.C. 20231

From: Mark W. Hendrickson (Tel. 509-624-4276; Fax 509-838-3424)
Wells, St. John, Roberts, Gregory & Matkin P.S.
601 W. First Avenue, Suite 1300
Spokane, WA 99201-3828

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Mark W. Hendrickson declares and states:

1. I am over the age of 18, competent to testify to the matters contained herein, and make the following statements on the basis of personal knowledge.
2. I am one of the attorneys of record in the above-referenced patent application and make this declaration in response to a Notice of Omitted Items.
3. I have reviewed the filing documents and the Notice of Omitted Items and determine that Figures 11 and 12 were submitted as sheet 5 of 8 in the original filing of the above-referenced patent application. I have attached as supporting documents to this Declaration the following:

- a. The darkened postcard receipt which on my original shows as item 6 "8 sheets of formal drawings (Figs. 1-15)".
- b. A copy of the Express Mail receipt.
- c. A copy of the Ex Post Declaration of Express Mailing, showing that "8 sheets of formal drawings (Figs. 1-15)" were submitted as item 6 in the materials.

I declare that even though a photocopy of the postcard may not be legible, the postcard received, the original of which is contained in my office, bears the Express Mail label "EL844051515US", which is the same as that shown for the receipt and that shown on the Ex Post Declaration of Express Mailing.

4. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of the application or any patent issued therefrom.

Dated: 4/17/02


Mark W. Hendrickson



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EV 077332980

EV 026158791



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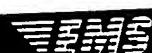
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PY2-023(MH/jb)

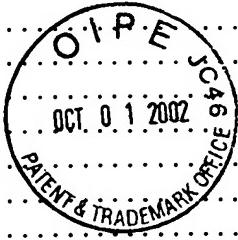
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION SERIAL NO. Unknown
 FILING DATE Filed Herewith
 INVENTORSHIP Gilbert et al.
 ASSIGNEE Pyrotek, Inc.
 GROUP ART UNIT Unknown
 EXAMINER Unknown
 ATTORNEY'S DOCKET NO. PY2-023
 TITLE: Molten Metal Pump Particle Passage System

EX POST DECLARATION OF EXPRESS MAILING

I hereby declare that I have deposited the below-listed papers with the United States Postal Service "Express Mail Post Office to Addressee" service, addressed and posted as indicated below, in compliance with 37 CFR 1.10. The Express Mail label No. has been placed on one or more of the papers listed.

Express Mail Number: El 844051515US

Date of Deposit: 10/26/01Time of Deposit: 4:37

AM/PM

Deposited By: Delivery to Postal EmployeeAddressee: Box Patent Application
Assistant Commissioner for Patents
Washington, DC 20231

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Place of Deposit:

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Last Scheduled Drop Box Pickup: 5:00 pm

- U.S. Post Office (DIST. CTR.)
2928 S. Spotted Road
Spokane, Washington 99202
Last Scheduled Drop Box Pickup: 9:00 pm
- U.S. Post Office _____ Branch

- Last Scheduled Drop Box Pickup: _____ am/pm

Listing Of Items Enclosed In Mailing:

1. Return Receipt Postcard
2. A \$780.00 Check
3. Utility Application Transmittal & Fee Transmittal
4. 20 Pages of Spec, Claims and Abstract plus title page
5. Inventors Declaration & Power of Attorney (newly executed)
6. 8 sheets of formal drawings (Figs. 1-15)
7. Assignment of the invention to Pyrotek, Inc. w/Recordation cover sheet
8. IDS including PTO-1449 and copies of cited references

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of the application or any patent issued therefrom.

Dated this 26 day of Oct, 2001.Dated at Spokane, Washington

Rhonda Rambo



EV 007332980 EV 023158791

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 10/047,198
Filing Date October 26, 2001
Inventor Gilbert, et al.
Assignee Pyrotek, Inc.
Group Art Unit 3745
Examiner Not yet assigned
Attorney's Docket No. PY2-023
Title: Molten Metal Pump Particle Passage System

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RESPONSE TO NOTICE OF OMITTED ITEM(S)

To: Assistant Commissioner for Patents
Washington, D.C. 20231

From: Mark W. Hendrickson (Tel. 509-624-4276; Fax 509-838-3424)
Wells, St. John, Roberts, Gregory & Matkin P.S.
601 W. First Avenue, Suite 1300
Spokane, WA 99201-3828

The Patent Office has indicated that Figures 7, 11 and 12 have been omitted from the application and has mailed a Notice of Omitted Item(s) in accordance therewith. Applicant responds by submitting that Figure 7 was in fact omitted and is not present in the drawings. There was a mis-numbering of the figures, and the drawings provided skipped Figure 7, going from Figure 6 to Figure 8. With respect to Figures 11 and 12, the applicant submits that Figures 11 and 12 were in fact submitted with the application, and in accordance with the Notice of Omitted Item(s), applicant is submitting herewith a copy of this Notice and a Petition with evidence of such deposit.

Accordingly, the applicant requests that the Petition fee be refunded once the U.S. PTO determines that the items were received by the U.S. PTO.

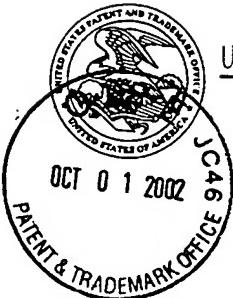
Applicant will be making a Preliminary Amendment to the figure numbers to accurately reflect the figures and coordinate them with the description in the specification and the numbered items contained therein.

Respectfully submitted,

Dated: 4/17/02

By: Mark W. Hendrickson
Mark W. Hendrickson
Reg. No. 32,356

EV 077332980



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 4

WELLS ST. JOHN ROBERTS GREGORY & MATKIN P.S.
601 W. FIRST AVENUE
SUITE 1300
SPOKANE, WA 99201-3828

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AUG 05 2002

In re Application of
Ronald E. Gilbert et al.
Application No. 10/047,198
Filed: October 26, 2001
Attorney Docket No. PY2-023

OFFICE OF PETITIONS

: DECISION DISMISSING
: PETITION

This is a decision on the petition filed April 17, 2002, in response to the Notice of Omitted Items, requesting that page 6 of 8 (figures 11 and 12) of the drawings be accepted as having been filed with the original application.

On October 26, 2001, the application was filed.

On March 29, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of October 26, 2001, but that, *inter alia*, Figures 7, 11 and 12 described in the specification appeared to have been omitted from the application.

In response, on April 17, 2002, the present petition was filed. Petitioners argue that due to misnumbering, there was in fact no figure 7 and that figures 11 and 12 which can be found on page 6 of 8 were in fact included. Therein, petitioners argue that a complete application was present on October 26, 2001, for filing date purposes. Petitioners point to their postcard receipt and the itemized transmittal letter as evidence that 8 pages of drawings including page 6 (figures 11 and 12) was among the application papers filed on October 26, 2001. Petitioners request that the application be accorded a filing date of October 26, 2001, with Page 6 as a part of the original disclosure.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503).

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Unfortunately, in this case, petitioners' postcard receipt is illegible and therefore cannot serve as proof of the contents of the application package filed October 26, 2001 or whether it is date stamped by the USPTO, which is the purpose of the post card receipt. The application transmittal letter is, at best, only evidence of what was intended to be filed, not evidence of what was actually received or filed in the USPTO. Finally, the Office considers the date the paper or fee is shown to have been deposited in "Express Mail" to be the "Date-in" on the Express Mail label. That is the date that verifies that the package was actually mailed. In this instance, the only purpose for petitioner to submit the express mail label would be to show that the application was deposited and received in the USPTO but, the contents of that package cannot be ascertained.

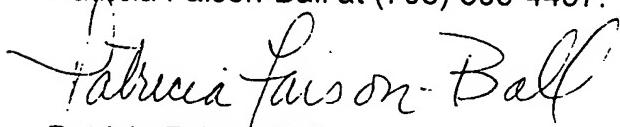
The petition is dismissed.

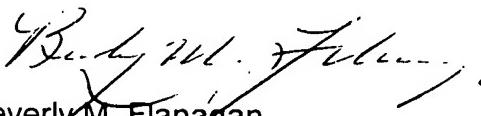
The copy of Page 6 (figures 11 and 12) supplied with the present petition will not be used for processing or examination, but will be retained in the application file. Petitioner may file Page 6 as a preliminary amendment. If Page 6 is filed as a preliminary amendment, the amendment will be reviewed for new matter.

As this petition was necessitated by applicants' filing error rather than an error on the part of the Office, the petition fee will not be refunded.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of October 26, 2001, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Patricia Faison-Ball at (703) 305-4497.


Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy


Beverly M. Flanagan
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



EV 077332980

EV 02158791

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 10/047,198
Filing Date October 26, 2001
Inventor Gilbert, et al.
Assignee Pyrotek, Inc.
Group Art Unit 3745
Examiner Not yet assigned
Attorney's Docket No. PY2-023
Title: Molten Metal Pump Particle Passage System

TRANSMITTAL LETTER AND CERTIFICATE OF MAILING

To: Assistant Commissioner for Patents
Washington, D.C. 20231

From: Wells St. John P.S.
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Telephone: (509) 624-4276
Fax: (509) 838-3424
Customer No.: 021567

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7. Copy of Notice of Omitted Item(s)
8. Check # 1346576 for \$130.00

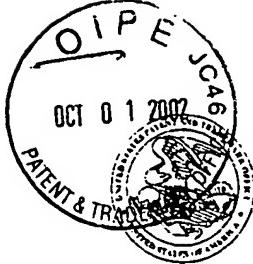
Small Entity Status is claimed.

Large Entity Status Applies.

Deposit Account Authorization - The Commissioner is hereby authorized to charge payment of fees or credit overpayment to Deposit Account No. 23-0925 in connection with: any patent application processing fees under 37 CFR 1.17; and any filing fees under 37 CFR 1.16 for the presentation of extra claims.

Date: 4/17/02

By: Mark W. Hendrickson
Mark W. Hendrickson
Reg. No. 32,356



EV 0773329
EV 026158791

Page 1 of 2

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/047,198	10/26/2001	Ronald E. Gilbert	PY2-023

021567
WELLS ST. JOHN P.S.
601 W. FIRST
SUITE 1300
SPOKANE, WA 99201-3828

CONFIRMATION NO. 4193
FORMALITIES LETTER

OC00000007750800

Date Mailed: 03/29/2002

NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has been accorded to the above-identified nonprovisional application papers; however, the following item(s) appear to have been omitted from the application:

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- Figure(s) 7,11,12 described in the specification.

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$130.00 petition fee (37 CFR 1.17(h))) with evidence of such deposit must be filed within TWO MONTHS of the date of this Notice. The petition fee will be refunded if it is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the \$130.00 petition fee (37 CFR 1.17(h))) requesting the later filing date must be filed within TWO MONTHS of the date of this Notice.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within TWO MONTHS of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b). In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any relabelled drawing figures, is required. Any drawing changes should be accompanied by a copy of the drawing figures showing the proposed changes in red ink. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.